HENRY MCMASTER
ATTORNEY GENERAL

July 31, 2007

Eric G. Fosmire, Esquire
South Congaree Town Attorney
P. O. Box 12487
Columbia, South Carolina 29211

Dear Mr. Fosmire:

In a letter to this office you questioned whether a chief of police is authorized to enter a nol pros on municipal court level tickets issued by officers within his department. You indicated that you are not referring to cases triable in general sessions court or to driving under the influence or criminal domestic violence cases.

As indicated in a prior opinion of this office dated June 3, 1996

> [t]he general principle that a prosecuting officer has virtually unlimited authority to decide whether or not to prosecute a case in a given instance has been reiterated by our courts as well as opinions of this office...

That opinion further stressed that

> ...the prosecutor is allowed wide discretion in whether or not to bring charges against an individual and if he so decides he is again allowed wide discretion as to what charge to prefer....This broad prosecutorial discretion gives the prosecutor alone the authority to nol pros a case at any time prior to impaneling of the jury.

Another prior opinion of this office dated January 11, 2001 indicated that generally "...a case triable in the municipal court may only be nol prossed in the discretion of the individual acting as the prosecutor." With reference to such, it must be determined who has the authority to act as prosecutor on cases triable in the municipal court.

In State v. Messervy, 258 S.C. 110, 187 S.E.2d 524 (1972), the State Supreme Court recognized the practice in magistrates' courts for an arresting patrolman to prosecute the cases that

he made. In its decision in State ex rel. McLeod v. Seaborn, 270 S.C. 696, 699, 244 S.E.2d 317, 319 (1978), the Supreme Court upheld the practice of supervisory officers assisting arresting officers in the prosecution of misdemeanor traffic cases determining that

> ...the prosecution of misdemeanor traffic violations in the magistrates' courts by either the arresting officer or a supervisory officer assisting the arresting officer does not constitute the unlawful practice of law....

In State v. Sossamon, 298 S.C. 72, 378 S.E.2d 259 (1989) the Court limited its decision in Messervy and Seaborn holding that an officer who was neither the arresting officer or the supervisor of the arresting officer was not allowed to prosecute a case in magistrates' courts. However, in its decision in In Re Unauthorized Practice of Law Rules Proposed by the South Carolina Bar, 309 S.C. 304, 307, 422 S.E.2d 123, 125 (1992), the Court

> ...reaffirmed the rule that police officers may prosecute traffic offenses in magistrate's court and in municipal court. Only the arresting officer may prosecute the case, although if the officer is new or inexperienced, he may be assisted at trial by one of his supervisors.

This office in a prior opinion dated April 21, 1981 noted that

> ...the chief of police is the primary law enforcement officer for the municipality and...all law enforcement of the municipality is subject to his direct supervision and control.

Another opinion dated October 13, 1978 dealt with the question of whether, as to cases prosecuted in the municipal court, would a chief of police have the authority to exercise any type of control over such cases, such as a nol pross where a review of the particular case indicated that it was not a proper case for prosecution. That opinion concluded that it would be within the authority of a chief of police to exercise discretion as to whether the case is a proper one for prosecution. Another opinion dated November 3, 1977 concluded that as to the particular situation referenced in the opinion, a case could be nol prossed "by the person in charge of prosecution, preferably the respective law enforcement chief."

As to your specific question regarding the authority of a chief of police to nol pros a case in municipal court, it appears that, consistent with the above-referenced State Supreme Court decisions and the prior opinions of this office, a chief of police would be authorized to act as chief prosecutor and, therefore, enter a nol pros in the circumstances referenced. A chief of police as the primary supervisory officer of a regular police officer within his department would appear to have the ultimate authority with regard to nol prossing a particular case

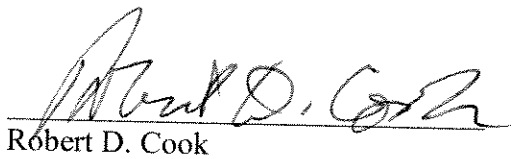
With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General